

TENTATIVE RULINGS—JANUARY 23, 2009

To request a hearing on any matter on this calendar, you must call the Court at (209) 257-2692 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

BONNEAU V. ALBERTA HALE LAND TRUST: 08CV5182

Defendants' Motion to Strike

On the Court's own motion, this matter is continued to February 6, 2009 at 10:00 a.m. in Department 2.

HEISSENBUTTEL V. ELAND CONSTRUCTION: 07CV5133

A Notice of Settlement of Entire Case was filed on December 15, 2008. Therefore, this motion is dropped from calendar.

JACKSON RANCHERIA V. WORTH: 07CV5069

Defendant's Demurrer

On the Court's own motion, this matter is continued to February 6, 2009 at 10:00 a.m. in Department 2.

MEYERS V. COUNTY OF AMADOR: 07CV4650

Plaintiffs' Motions for Issue Sanctions & Defendant's Motion to Bifurcate

The Court ordered the trial judge hear the above motions. Due to the pending C.C.P. §170.3 filed against the Honorable Don F. Howard, these motions must be continued. If the §170.3 challenge is disposed of prior thereto, the Court will issue a tentative ruling on said motions on January 30, 2009. Any oral argument will be heard on the first day of trial, February 3, 2009.

Defendant's Motion for Good Faith Settlement

This motion is continued to January 30, 2009 at 10:00 a.m. in Department 2. If the 170.3 has not been determined by said date, the motion will be heard by the Honorable Susan C. Harlan.

O'SULLIVAN V. LORETTA: 07CV4599

Defendant's Motions to Compel

On the Court's own motion, these matters are continued to January 30, 2009 at 10:00 a.m. in Department 2.

PEACH V. CDCR: 07CV4833

Defendant's Motion for Judgment on the Pleadings & Defendant's Motion to Continue Trial Date

On the Court's own motion, these matters are continued to February 6, 2009 at 10:00 a.m. in Department 2.

SHERWOOD V. KANTAR: 07CV5089

Plaintiff's Motion for Leave to File First Amended Complaint

Plaintiff's unopposed motion for leave to file first amended complaint is hereby granted. Plaintiff is to file and serve the amended complaint within 10 days of the date of this order.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

SOUZA V. HIDDEN VILLA: 07CV4996

Defendant's Motion for Summary Judgment or, in the Alternative, Summary Adjudication of Issues

Evidentiary Objections:

1. Order on Defendant's Objections to Evidence in Support of Opposition to Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues:

The following objections are sustained: 27, 37, 46, 121, 124, 125, 126, 142, and 144.

The remainder of the objections are overruled.

2. Order on Defendant's Objections to Evidence in Plaintiff's Separate Statement of Undisputed Material Facts:

The following objections are sustained: 2, 5, 6, 15, 16, 17, 20, 21, 23, 24, 29, 30, 31, 32, 34, 39, 42, 45, 49, 50, 52, 53, 56, 58, 59, 60, 61, 62, 64, 67, 69, 73, 82, 85, and 86.

The remainder of the objections are overruled.

Substantive Issues:

The motion for summary adjudication is granted in part and denied in part.

The motion for summary adjudication is denied as to the contention that Kathy Souza does not have standing to bring her claims. There is a triable issue of material fact as to whether Robert Kelly offered Kathy Souza a position. (see Plaintiff's Separate Statement, Fact 26.)

The motion for summary adjudication is granted as to the breach of contract cause of action. James Souza signed two documents, which acknowledged his at-wills status. An at-will provision in an express written agreement, signed by the employee, cannot be overcome by proof of an implied contract to the contrary. (Guz v. Bechtel National, Inc. (2000) 24 Cal.4th 317, 340, fn. 10; Dore v. Arnold Worldwide, Inc. (2006) 39 Cal.4th 384; Starzynski v. Capitol Public Radio (2001) 88 Cal.App.4th 33, 38 (noting that an at-will agreement precludes the existence of an implied contract requiring good cause for termination.)

The motion for summary adjudication is denied as to the cause of action for breach of the implied covenant of good faith and fair dealing. The complaint at paragraph 29 alleges the defendant failed to provide service to James' former customers, which is action separate from James' termination. There is a triable issue of material fact as to whether the defendant breached the covenant by failing to provide services to James Souzas' customers.

The motion for summary adjudication is denied as to the negligence cause of action. The defendant failed to meet its burden of showing there is no triable issue of material facts pertaining to this cause of action. Therefore, the burden never shifted to the plaintiff to demonstrate the existence of a triable issue.

The motion for summary adjudication is denied as to the cause of action for intentional interference with contractual relations. There is evidence suggesting the defendant did more than simply extend a job offer to the plaintiff. There is a triable issue regarding whether the defendant misrepresented the status of negotiations with Freitas Fresh Eggs to induce the plaintiff to terminate his employment with Olivera Foods. (see UMF 72 and opposition thereto.)

The motion for summary adjudication is denied as to the intentional interference with prospective economic advantage cause of action. There is a dispute regarding whether the defendant misrepresented the status of

negotiations with Freitas Fresh Eggs to induce the plaintiff to terminate his employment with Olivera Foods. (see UMF 72 and opposition thereto.) As such, there is a triable issue as to whether there was a wrongful act committed by the defendant.

The motion for summary adjudication is denied as to the negligent interference cause of action. There is a dispute regarding whether the defendant misrepresented the status of negotiations with Freitas Fresh Eggs to induce the plaintiff to terminate his employment with Olivera Foods and, thereby sever his relationships with clients. (see UMF 72 and opposition thereto.) As such, there is a triable issue as to whether there was a wrongful act committed by the defendant.

The motion for summary adjudication is granted as to the promissory estoppel cause of action. The reliance claimed by the plaintiffs is for the performance of the acts bargained for. (see Youngman v. Nevada Irrigation Dist. (1969) 70 Cal.2d 240, 249.) Therefore, the doctrine is inapplicable.

The motion for summary adjudication of the equitable estoppel cause of action is granted. Plaintiffs have failed to properly plead equitable estoppel. Plaintiffs did not respond to the motion regarding this cause of action and, therefore, failed to meet their burden.

The motion for summary adjudication for the fraud/intentional misrepresentation is denied. There is a triable issue regarding whether the defendant misrepresented the status of negotiations with Freitas Fresh Eggs to induce the plaintiff to terminate his employment with Olivera Foods. (see UMF 72 and opposition thereto.)

The motion for summary adjudication for the negligent misrepresentation is denied. There is a triable issue regarding whether the defendant misrepresented the status of negotiations with Freitas Fresh Eggs to induce the plaintiff to terminate his employment with Olivera Foods. (see UMF 72 and opposition thereto.)

As noted herein above, triable issues of material fact exist. Therefore, the motion for summary judgment is hereby denied.

STOLTIE V. GOVERNMENT CLAIMS BOARD: 08CV5593

There is no tentative ruling in this matter, pursuant to Local Rule 4.03 (F).

THE CITY OF PLYMOUTH V. EVITT: 07CV4883

Plaintiff's Motion for Summary Judgment or, in the Alternative, Summary Adjudication of Issues

On the Court's own motion, this matter is continued to February 6, 2009 at 10:00 a.m. in Department 2.